

National Park Service, Interior

§ 13.325

authorization. If the best offer from a preferred operator is at least substantially equal to the best offer from a non-preferred operator, the preferred operator will receive authorization. If an offer from a person besides a preferred operator is determined to be the best offer (and no preferred operator submits a responsive offer that is substantially equal to it), the preferred operator who submitted the best offer from among the offers submitted by preferred operators will be given the opportunity, by amending its offer, to meet the terms and conditions of the best offer received. If the amended offer of such a preferred operator is considered by the Director as at least substantially equal to the best offer, the preferred operator will receive the visitor service authorization. If a preferred operator does not amend its offer to meet the terms and conditions of the best offer, the Director will issue the authorization to the person who submitted the best offer in response to the solicitation.

(c) The Native Corporation(s) determined to be “most directly affected” under this subpart and local residents have equal preference. The rights of preferred operators under this section take precedence over the right of preference that may be granted to existing satisfactory National Park Service concessioners pursuant to the Concessions Policy Act (16 U.S.C. 20) and its implementing regulations and procedures, but do not take precedence over the rights of historical operators or CIRI as described in this subpart.

(d) An offer from a preferred operator under this subpart, if the offer is in the form of a joint venture, will not be considered valid unless it documents to the satisfaction of the Director that the preferred operator holds the controlling interest in the joint venture.

(e) Nothing in this subpart will prohibit the Director from authorizing persons besides preferred operators to provide visitor services in park areas as long as the procedures described in this section have been followed. Preferred operators are not entitled by this section to provide all visitor services in a park area.

(f) The preferences described in this section may not be sold, assigned,

transferred or devised, directly or indirectly.

§ 13.320 Preference to Cook Inlet Region, Incorporated.

(a) The Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet region when appropriate, will have a right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet region. In order to exercise this right of first refusal, the National Park Service will publicly solicit competitive offers for the visitor services authorization pursuant to 36 CFR part 51 or other applicable National Park Service procedures. CIRI must submit a responsive offer within 90 days of such solicitation. If CIRI makes such an offer and is determined by the Director to be capable of carrying out the terms and conditions of the visitor services authorization, it will receive the authorization. If it does not, the authorization may be awarded to another person pursuant to usual National Park Service policies and procedures if otherwise appropriate.

(b) The CIRI right of first refusal will have precedence over the rights of preferred operators. An offer from CIRI under this section, if the offer is in the form of a joint venture, will not be considered valid unless it demonstrates to the satisfaction of the Director that CIRI has a controlling interest in the joint venture.

(c) The CIRI right of first refusal may not be sold, transferred, devised or assigned, directly or indirectly.

§ 13.325 Most directly affected Native Corporation.

(a) Before the award of the first visitor service authorization in a park area to be made after the effective date of this subpart, the Director will provide an opportunity for any Native Corporation interested in providing visitor services within the applicable park area to submit an application to the superintendent to be determined the Native Corporation most directly affected by the establishment or expansion of the park area by or under the

§ 13.330

provisions of ANILCA. An application from an interested Native Corporation will include the following information:

(1) Name, address, and phone number of the Native Corporation; date of incorporation; its articles of incorporation and structure;

(2) Location of the corporation's population center or centers; and

(3) An assessment of the socioeconomic impacts, including historical and traditional use and land-ownership patterns and their effects on the Native Corporation as a result of the expansion or establishment of the applicable park area by ANILCA.

(4) Any additional information the Native Corporation considers relevant or the Director may reasonably require.

(b) Upon receipt of all applications from interested Native Corporations, the Director will determine the "most directly affected" Native Corporation considering the following factors:

(1) Distance and accessibility from the corporation's population center and/or business address to the applicable park area; and

(2) Socioeconomic impacts, including historical and traditional use and land-ownership patterns, on Native Corporations and their effects as a result of the expansion or establishment of the applicable park area; and

(3) Information provided by Native Corporations and other information considered relevant by the Director to the particular facts and circumstances of the effects of the establishment or expansion of the applicable park area.

(c) In the event that more than one Native Corporation is determined to be equally affected within the meaning of this section, each such Native Corporation will be considered as a preferred operator under this subpart.

(d) The Director's most directly affected Native Corporation determination applies to the award of all future visitor service authorizations for the applicable park area. However, a Native Corporation that did not apply for this determination in connection with an earlier visitor services authorization may apply for a determination that it is an equally affected Native Corporation for the applicable park area in connection with a later visitor

36 CFR Ch. I (7-1-12 Edition)

services authorization. Such subsequent applications must contain the information required by paragraph (a) of this section, and must be made in a timely manner as described by the Director in the applicable solicitation document so as not to delay the consideration of offers for the visitor services authorization.

§ 13.330 Appeal procedures.

An appeal of the denial of rights with respect to providing visitor services under this subpart may be made to the next higher level of authority. Such an appeal must be submitted in writing within 30 days of receipt of the denial. Appeals must set forth the facts and circumstances that the appellant believes support the appeal. The appellant may request an informal meeting to discuss the appeal with the National Park Service. After consideration of the materials submitted by the appellant and the National Park Service record of the matter, and meeting with the appellant if so requested, the Director will affirm, reverse, or modify the denial appealed and will set forth in writing the basis of the decision. A copy of the decision will be forwarded to the appellant and will constitute the final administrative decision in the matter. No person will be considered to have exhausted administrative remedies with respect to a denial of rights to provide visitor services under this subpart until a final administrative decision has been made pursuant to this section.

§ 13.335 Information collection.

(a) The information collection requirements contained in this part have received emergency approval from the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, for the basic contracting program under OMB clearance number 1024-0125. The information is being collected as part of the process of reviewing the procedures and programs of State and local governments participating in the national historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.